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## THE PRESENT STATUS OF THE NRA

By EDWARD V. DUNKLEE, *of the Denver Bar,  
Chairman of the State Recovery Board*

I HAVE read with much interest the article by my esteemed friend, Frazer Arnold, Esquire, of the Denver Bar, entitled "Can NRA Be Made Constitutional?" in the June DICTA, and since my interest has been particularly turned along this line, I wish to make a few comments in answer thereto.

First, let me say as a lawyer that Mr. Arnold has handled his side of the question in a masterful manner, and I submit that if there is any disagreement with him that it should be upon the larger basis of the welfare of the American people as a whole rather than upon a technical discussion of the law involved, and I will endeavor to discuss the question from this viewpoint.

In other words, in discussing the NRA and similar projects under the "New Deal" we must not forget that they were inaugurated as emergency measures to tide a desperate people over a desperate situation. That on March 4, 1933, the banks throughout the country were closed; the ex-service men were marching upon Washington in search of employment and were being driven out of their nation's capital at the point of the bayonet; business houses of great magnitude were falling upon all sides about the heads of our people as though the columns were being pushed out from under them by a mighty, invisible Samson; there were visible expressions on every hand of the most violent and widespread depression and panic that ever beset this country; the collapse and failure of the stock market had reached its culmination and values had shrunk beyond believable proportions; literally millions of men, women and children were roaming the streets and highways looking for work and begging bread, and the country was on that same verge of desperation that preceded the

storming of the Bastile in Paris. Something had to be done by the new administration, and it had to be done quickly. Transfusions of encouragement had to be injected into business, and in short everything possible had to be done to defend the country against fascism, communism and revolution, which were brewing just under the surface of our civilization. Is it small wonder, then, that some of the measures proposed went technically beyond the powers granted in the constitution? The question arises as in Bible times—was the Sabbath made for man, or man for the Sabbath, and, paraphrasing, was the constitution made for the American people or the American people for the constitution? No one respects the power, force and almost divine wisdom expressed in the constitution than the writer, or for that matter any lawyer should who understands the inspiring background and conditions under which it was written. But as I have said, the NRA and similar measures were instituted and promulgated to tide over perilous times, and whether or not they are strictly constitutional they have performed the greatest possible service of averting revolution and in assisting in bringing back at least a semblance of prosperity and order.

Many of the underlying principles and purposes of the NRA are desirable and wholly humane and should be retained in our structure of laws. For instance, the abolition of child labor at one stroke of the pen is one of the mightiest examples of successful humane advancement ever witnessed, and the minimum wage for women was another feature whose benefits cannot be gainsaid. In fact there were so many valuable features in the law that the various states, including Colorado, are making an effort to continue the spirit of the NRA, and business on every hand is realizing that it needs its principles of fair play to appeal to the public. Senate Bill 171, which was passed at the last Legislature, provides, by *voluntary* methods, to save the spirit of the NRA. Certainly it is creditable, both to industry and labor, that they desire to get together upon some common meeting ground to iron out their difficulties and to prevent disputes and strikes and bloodshed, so disastrous to the public welfare. The meat of that Senate Bill so passed is expressed in one paragraph, which guides the

action of the Colorado State Recovery Board, and which reads as follows:

"Upon application to the Board by one or more trade or industrial associations or groups, the Board shall approve or prescribe a code or codes of fair competition for the trade or industry or subdivision thereof represented by the applicant or applicants. If the Board, after such hearings as it may deem necessary, finds that such associations or groups impose no inequitable restrictions for admission to memberships therein and are truly representative of such trades or industries or subdivisions thereof, and that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises, and will not operate to discriminate against them, and will tend to effectuate the policy of this Act," etc.

It can be seen by the above that the whole structure now is a matter of volition and agreement and arbitration, which after all is the noblest exercise of a civilized community.

The industry or trade comes to the Board (which consists of one member who represents the public and the consumer, one member who represents labor, and a third member who is appointed by each industry or trade to sit on the cases in which that industry or trade is concerned) voluntarily and presents its proposed code of fair competition for approval or disapproval or suggested change. On one side of the table sits industry with its problems, on the other side sits labor with its aims, and the public sits between them to advise with both for the benefit of the consumer. The committee-man who represents the industry must be truly representative, and selected by at least 80 per cent of that industry, while the other members of that industry must be notified and have their day in court upon the proposed code. Labor also has its notice and its day in court. The points of disagreement are ironed out as best they can be by compromise and a system of give and take, and the final draft made satisfactory to all three interests around the table.

In conclusion, then, if nothing more than this spirit of fair play and consideration of the other fellow has come out of the NRA the effort has not been in vain, and if we look at the NRA from the broad viewpoint of the welfare of the American people we cannot feel unkindly toward its objects, its purposes, and its accomplishments.